



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,657	11/10/2003	Jeremy Thaler	10770013010202	6140
37211	7590	08/22/2006	EXAMINER	
BASCH & NICKERSON LLP 1777 PENFIELD ROAD PENFIELD, NY 14526			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER

1761

DATE MAILED: 08/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,657

Applicant(s)

THALER ET AL.

Examiner

Helen F. Pratt

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11-10-03 are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by American Classic (label from jar only).

The American Classic label discloses a peanut butter made from organically grown dry roasted blanched peanuts, organic palm oil, sugar and salt as in claims 1 and 2, 5, 6, 7, 8. The particular amounts of oil are seen to have been disclosed in the composition, which must contain certain amounts of oil in order to be called a peanut butter.

The limitations of claim 3 are seen to have been met as to the melting point as the claimed palm oil has been shown.

The limitations as to claim 4 are process limitations, which are not given weight in a composition claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 10, 12-18, 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lui et al. (6,982,101) in view of American Classic (Label).

Liu discloses a sweetened nut butter spread made by grinding nuts in the presence of oil at a temperature of from ambient to 165 F (abstract and col. 2, lines 50-70). Cooling is a given since peanut butter is not kept in a heated state. The palm oil is used in amounts from 1-15%, preferably 2-12% (col. 3, lines 5-10, 20-25). Claims 12, 15, and 21 differs from the reference in the use of organically grown peanuts and organic palm oil (210). However, American Classic discloses that it is known to use organically grown peanuts. Also, nothing new is seen in using organically grown peanuts as opposed to commercially grown peanuts, absent a showing of unexpected results in using peanuts which are grown without the use of chemical fertilizers.

Nothing new is seen in adding the oil during the grinding step into the mill, as in claim 14 as this has to have been done in order for the peanuts to have been ground

(abstract). Therefore, it would have been obvious to dispense oil into the apparatus which as grinding the peanuts.

Claims 14 and 15 further require preheating the oil before dispensing the oil into the mill at particular temperatures and claim 16 requires roasting the peanuts before grinding. The reference is silent as to heating the oil. However, nothing new is seen in heating the oil before adding it since the peanut paste and oil were maintained at a temperature above 133 F. absent a showing of unexpected results using the claimed temperatures. Certainly the nuts are roasted before grinding (col. 2, lines 41-50). Therefore, it would have been obvious to dispense oil into a mill at particular temperatures and to grind the nuts prior to roasting.

Lui discloses roasting nuts at from 270 to 370 (col. 2, lines 41-50). Therefore, it would have been obvious to roast at known temperatures.

Removing the skins is disclosed in col. 2, lines 44-50 as in claim 18.

Nothing new is seen as in claim 20 of collecting and pumping the peanut mixture to a heat exchanger and filling station, which is routinely done in the art. Therefore, it would have been obvious to collect, and pump the mixture in order to put it into containers.

Adding salt and sweetener is disclosed in col. 5, lines 40-60, as in claims 22 and 23, and milling to within the claimed range is disclosed in Lui who uses from 10-20 mils, preferably 13 mils.

Art Unit: 1761

Claims 9, 11, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Krisinski et al. (4,143,176).

Krisinski et al. disclose that it is known to use particle sizes of from 8-20 microns as in claims 11 and 24 (col. 1, lines 58-70). Also, Krisinski et al. discloses that it was known to make a conventional peanut butter using normal skins and germ in the amounts of 50-60% as in claims 9 and 19 (col. 2, lines 22-41). Therefore, it would have been obvious to grind to a particle size as claimed as shown by Krisinski et al. in the process of the combined references and to add the germ to the composition.

Miscellaneous.

Claim 16 requires a period at the end of the sentence.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

Application/Control Number: 10/705,657


Page 6

Art Unit: 1761

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

Hp 8-18-06


HELEN PRATT
PRIMARY EXAMINER